

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Administrative Order  
Issued to LeMaster Companies, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDATION**

This matter was heard by Administrative Law Judge Steve M. Mihalchick<sup>1</sup> at the Office of Administrative Hearings on July 26, 2010. The final written closing argument was received and the record was closed on August 10, 2010.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, represents the Department of Labor and Industry. Valerie LeMaster, Attorney at Law, Mackenzie & Dornik, P.A., 150 South Fifth St, Suite 2500, Minneapolis, MN 55402, represents Respondent LeMaster Companies, Inc.

**ISSUE**

This matter involves two corporations, Respondent LeMaster Companies, Inc. ("LeMaster Companies" or "Respondent") and LeMaster Restoration, Inc., ("LeMaster Restoration"). The issue in this case is whether Respondent acted or held itself out as a residential building contractor, remodeler, or roofer without a license issued by the Commissioner in violation of Minn. Stat. §§ 326B.805, subds. 1 and 3, and 326B.84(5)(2008).

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Verdean LeMaster is the sole owner and officer of LeMaster Restoration. LeMaster Restoration is in the water damage restoration business, also known as disaster restoration or insurance repair. That business sometimes requires services performed by residential building contractors, remodelers, or roofers licensed under Minn. Stat. § 326.805, subds. 1 and 3. LeMaster Restoration had such a license.

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<sup>1</sup> Retired Administrative Law Judge appointed pursuant to Minn. Stat. § 14.48, subd. 4. Unless otherwise specified, statutory references are to 2010 Minnesota Statutes, which are available at [www.revisor.mn.gov/statutes](http://www.revisor.mn.gov/statutes).

2. In July of 2009, the Department initiated disciplinary action against LeMaster Restoration and Verdean LeMaster in a Licensing Order (the 2009 Licensing Order), which they contested. On January 4, 2010, the Department amended the Notice and Order for Hearing in the 2009 Case to include an Order for Summary Suspension of LeMaster Restoration's residential building contractor's license pending the Commissioner's final order in the 2009 Case.<sup>2</sup> That final order was issued on August 30, 2010.

3. Verdean LeMaster and LeMaster Restoration have been and continue to be in serious financial condition. The Summary Suspension made matters worse. To avoid liquidation or a receivership of his business, Verdean LeMaster arranged for a family loan from his parents and from another sister and that sister's husband. LeMaster Companies, Inc., a separate corporation, was formed by its counsel on February 4, 2010, to be the vehicle for that loan. Verdean LeMaster's parents, sister, and brother-in-law became the owners of LeMaster Companies, and LeMaster Companies took over some or all of the bank debt of LeMaster Restoration, becoming a creditor of LeMaster Restoration. Verdean LeMaster is not a shareholder, officer, or employee of LeMaster Companies. Verdean LeMaster and LeMaster Restoration have made no payments on their debt to LeMaster Companies, and there is no schedule for doing so.<sup>3</sup> Additional evidence regarding this transaction was offered in the 2009 Case, but is not part of the record here.

4. LeMaster Companies' registered office is the same as LeMaster Restoration's registered office and business address. Any records that LeMaster Companies has are maintained in LeMaster Restoration's office.<sup>4</sup>

5. LeMaster Companies has not been licensed by the Department in any capacity and has not been the subject of any previous enforcement action.<sup>5</sup>

6. In order to enhance LeMaster Restoration's business providing the restoration services that did not require licensure, Verdean LeMaster retained a marketing company to market the business online with a website.

7. Sometime prior to March 23, 2010, the website appeared at [www.lemasterminneapolis.com](http://www.lemasterminneapolis.com). It was an advertisement for LeMaster Companies, Inc., offering water damage restoration services. It offered several individual services, including roofing, siding, and insurance repair.<sup>6</sup>

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<sup>2</sup> Exhibit 1 at DLI 000048 - DLI 000172.

<sup>3</sup> Testimony of Verdean LeMaster.

<sup>4</sup> Exhibit 1 at DLI 000006; Testimony of Verdean LeMaster and Valerie LeMaster. The Administrative Law Judge takes administrative notice that the Secretary of State's website shows that LeMaster Management Services, Inc. at the same registered office, was formed that day.

<sup>5</sup> Testimony of Chris Williams.

<sup>6</sup> Exhibit 1 at DLI 000001 - DLI 000002; Testimony of Williams.

8. Residential roofing and siding are “special skills” under Minn. Stat. § 326B.802, subd. 15. Providing or offering to provide two or more “special” skills” constitutes being a “residential building contractor” under Minn. Stat. § 326B.802, subd. 11.

9. The reference to LeMaster Companies on the website was requested by Verdean LeMaster, or perhaps someone within LeMaster Restoration or the marketing company. LeMaster Companies had no role in producing the website.<sup>7</sup>

10. Verdean LeMaster testified and Respondent argued that the advertisement was offering commercial, not residential roofing and siding. However, the advertisement did not make that distinction. To the contrary, it had pictures of the exterior and interior of a house and no pictures of a commercial building. In describing “What we do,” it stated that LeMaster Companies would “ensure your home or business is returned to pristine condition.”<sup>8</sup> That is a clear statement that LeMaster Companies was offering residential roofing and siding as part of its restoration services.

11. The Department became aware of the website when Chris Williams, a Department Investigator, received some anonymous telephone calls stating that LeMaster Restoration was attempting to reorganize as a different company. She did a web search for “LeMaster” and found the LeMaster Companies website advertisement. She considered the website to be offering residential building contractor services. Williams then called the phone number listed on Respondent’s advertisement, the phone was answered “LeMaster Restoration.” Williams hung up. She considered the website to be an attempt by Verdean LeMaster and LeMaster Restoration to circumvent the Summary Suspension.<sup>9</sup>

12. On March 23, 2010, the Department issued an Administrative Order to LeMaster Companies (“the Administrative Order”)<sup>10</sup> ordering it to cease and desist from acting or holding itself out as a residential building contractor, remodeler, or roofer until it obtained appropriate licensure. It also assessed LeMaster Companies a monetary penalty of \$5,000. Neither LeMaster Restoration nor Verdean LeMaster was named as a respondent in the Administrative Order.

13. Shortly after receiving the Administrative Order, Valerie LeMaster, on behalf of LeMaster Companies, called Verdean LeMaster and told him to remove the LeMaster Companies’ name from the website. Verdean LeMaster called the marketing company and instructed them to remove LeMaster Companies’ name from the website. On or before April 23, 2010, the name on the [www.lemasterminneapolis.com](http://www.lemasterminneapolis.com) website was been changed to LeMaster Restoration, Inc.<sup>11</sup>

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<sup>7</sup> Testimony of Verdean LeMaster and Valerie LeMaster.

<sup>8</sup> Ex. 1 at DLI000003.

<sup>9</sup> Testimony of Williams.

<sup>10</sup> The 2010 Administrative Order is attached to the Notice and Order for Hearing in this matter.

<sup>11</sup> Ex. 1 at DLI000007; Testimony of Valerie LeMaster, Verdean LeMaster, and Williams.

14. On April 22, 2010, Respondent requested a hearing on the Administrative Order. On April 27, 2010, the Department served the Notice and Order for Hearing in this matter upon Respondent.

### **CONCLUSIONS OF LAW**

15. The Administrative Law Judge and the Commissioner are authorized to consider the charges against the Respondent under Minn. Stat. §§ 14.50, 326B.082, and 326B.84.

16. The Respondents received due, proper and timely notice of the charges against them and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

17. The Department has complied with all relevant procedural legal requirements.

18. In order to prevail, the Department must prove by a preponderance of the evidence that the alleged violation occurred.

19. The Notice and Order for Hearing and attached Administrative Order allege that Respondent acted or held itself out as a residential building contractor, remodeler, or roofer without a license issued by the Commissioner in violation of Minn. Stat. §§ 326B.805, subds. 1 and 3, and 326B.84(5)(2008).

20. The Department has failed to prove that Respondent acted or held itself out as a residential building contractor, remodeler, or roofer because the preponderance of the evidence is that Respondent never provided such services and, more importantly here, never had any role in the preparation or publication of the website at issue.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

### **RECOMMENDATIONS**

**IT IS HEREBY RESPECTFULLY RECOMMENDED** that:

1. the Administrative Order be **WITHDRAWN OR DISMISSED**, and
2. the Commissioner take no disciplinary action against Respondent.

Dated: October 25, 2010.

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Digitally Recorded

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Steve Sviggum, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

### **MEMORANDUM**

#### **Background Facts**

The evidence in this case was not strong. The Department relied upon anonymous tips, statements on a website, a telephone answer, and corporate filings on the Secretary of State's website for its assumptions and allegations.

On the other hand, no owner, officer, or employee of Respondent LeMaster Companies testified. Verdean LeMaster presented the only testimony in this matter on behalf of Respondent, even though he is not an owner or officer of Respondent.

However, as the sole owner and officer of LeMaster Restoration, he was able to provide some information on the website at issue here and the intent of LeMaster Restoration to continue in business in some form. He largely took responsibility on behalf of LeMaster Restoration for the actions alleged by the Department to be illegal, a conclusion he disputed. His testimony was not totally believable, but believable on certain points.

Additional evidence on the legal organization of Respondent was presented by Respondent's counsel, Valerie LeMaster, in representations in pleadings or at the hearing, or in limited testimony at the hearing requested by counsel for the Department and to which she objected. The Administrative Law Judge finds that her representations and limited testimony were credible.

In its closing argument, the Department argued that Respondent and LeMaster Restoration are affiliated companies and that Respondent knew or should have known about the advertisement. In light of the quick correction to the website, the Department suggested that the civil penalty imposed by the Administrative Order should be stayed so long as Respondent does not violate any laws, rules, or orders related to the duties and responsibilities entrusted to the Commissioner.

A stay or other minor sanction would have been appropriate if there had been a violation by Respondent, but none was proven. The violation was by Verdean LeMaster and LeMaster Restoration, but they were not named as Respondents. Moreover, it has not been shown that the two corporations are affiliated so that the actions of one can be imputed to the other.

S.M.M.